IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1 OF 2005

M/s.Amber Enterprises .. Appellants

Versus

Smt.Pushpa Dwarkadas Ruparelia

and Anr. .. Respondents

Mr.G.S.Godbole with L.J.Shukla for appellants

Mr.Anil Singh with D.R.Shah for respondents

CORAM : S.C.DHARMADHIKARI,J.

Vacation Judge.

DATE : JANUARY 5, 2005.

P.C.

. Heard Mr.Godbole, learned Counsel appearing for appellants and Mr.Singh, learned

Counsel appearing for respondent No.1 original plaintiff. For the purpose of appeal it is not necessary to hear the Slum Rehabilitation Authority. Appellants are aggrieved by the order passed by the City Civil Court in a notice of motion taken out in S.C. Suit No.5824 of 2004 instituted by first respondent. The trial court has passed an order restraining the appellants from making any construction on the suit property till 13th January 2005 and the notice of motion is posted on the said date for hearing and final disoposal.

2. Mr.Godbole makes a serious grievance that on the date on which ad-interim order has been passed by the trial court i.e. on 23rd December 2004, appellants had completed the construction of the rehabilitation portion i.e. a structure of ground plus seven storeys and what remained on that date to be done was internal work, plastering of the same. The difficulty that is

faced by the appellant is that by virtue of the order passed by the trial court even internal work and plumbing of the structure already erected is incomplete.

3. On the other hand Mr.Singh, learned Counsel appearing for respondent original plaintiff contends that the trial court has rightly passed an order restraining any construction activity. Mr.Singh, contends that the first respondent is lessee of the entire property and there are documents to evidence his title in respect thereof. His rights could not have been by-passed by S.R.A. and the appellants and, therefore, a strong prima facie case was made out for grant of the ad-interim orders by the trial court.

4. On the last occasion I had directed appellants to place on affidavit the nature and extent of construction activity at site. In

response thereto, an affidavit has been filed by partner of appellant firm on 4th January 2005. In para 1 of the said affidavit, status of the existing building is pointed out and it is further contended that this building will house the slum dwellers on the poperty and other structure owners as identified by S.R.A. It is contended that slab and brick work is completed. Shops on the ground floor are already complete with shutters. However, insofar as upper floors are concerned, external/internal plaster/ flooring, windows, doors and finishing works are pending. Appellants have undertaken that save and except this construction, no other construction activity will be commenced at site till the notice of motion is heard and disposed of by the City Civil Court. Similarly, appellants have undertaken not to construct any additional floors on the existing building but they will only complete the works which are remaining and set out hereinabove.

5. In my view, the trial court ought to have taken all this into account before passing the impugned order. Now that the material has been placed before me, interest of justice would be served if the order passed by the trial court is modified and substituted by the following:-

a) Notice of motion which is registered in S.C. Suit No.5824 of 2004 be heard and disposed of by the trial court as expeditiously as possible and in any event by 10th March 2005.

b) Appellants are restrained from constructing any additional floors on the existing building but they are permitted to complete external/ internal plastering, flooring, fixing of windows and doors in respect of the same.

c) Appellants are restrained from putting up any further construction on the site till the notice of motion is disposed of by the trial court.

d) This order is without prejudice to the rights and contentions of the appellants as well as respondent No.1 original plaintiff.

e) This order will not prevent S.R.A. from taking such steps as are permissible in law.

f) All contentions on merits are expressly kept open and the trial court to dispose of the notice of motion uninfluenced by the observations made in the impugned order as well as this order.

g) Liberty to apply for variation

and/or modification of this order in case any steps are being initiated by the appellants as well as S.R.A. to place the slum dwellers in possession.

h) A.O. disposed of accordingly.

i) Parties to appear before the trial court on 13th January 2005 and the trial court shall fix time limit for filing affidavits in reply and rejoinder on that date.

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